

**LFC Requester:****Theresa Rogers****AGENCY BILL ANALYSIS  
2016 REGULAR SESSION****WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:****[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)***and***[DFA@STATE.NM.US](mailto:DFA@STATE.NM.US)***{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}***SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}**Check all that apply:*Original ☐ Amendment ☐  
Correction ☐ Substitute ☒**Date** 2/11/16**Bill No:** HB 305-substitute**Sponsor:** Sen. J. Zimmerman; Sen. A.**Agency Code:** 305**Short** Additional Felonies for Prison**Person Writing** Nicholas K. Gilbert**Title:** Earned Time**Phone:** 827-6716**Email** ngilbert@nmag.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: none.

Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE****BILL SUMMARY**

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

**Synopsis:**

The Earned Meritorious Deductions Act (§33-2-34 NMSA 1978) (hereinafter Act) currently allows offenders convicted of non-violent offenses to earn a thirty (30) day meritorious deduction for every thirty (30) days of incarceration, allows offenders convicted of serious-violent offenses—enumerated in §33-2-34(L)(4)—to earn a four (4) day meritorious deduction for every thirty (30) days incarcerated, and precludes offenders sentenced to life in prison from earning meritorious deductions. Additionally, the Act allows a court to determine whether crimes enumerated in §33-2-34(L)(4)(r) (hereinafter optional serious violent offenses) should be serious violent offenses for the purposes of earned deductions based on the nature of the offense and resulting harm. HB 305-Substitute amends §33-2-34 in the following ways:

- 1) Prohibits offenders who are convicted of first-degree child abuse resulting in death from earning meritorious deductions;
- 2) Mandates that serious youthful offenders convicted of first-degree murder earn four (4) day meritorious deduction for every thirty (30) days incarcerated;
- 3) Moves child abuse resulting in great bodily harm from the list of optional serious violent offenses to the list of enumerated serious violent offenses;
- 4) Moves homicide by vehicle and great bodily harm by vehicle while under the influence of intoxicating liquor or drugs (§66-8-101) from optional serious violent offenses to serious violent offenses;
- 5) Adds injury to a pregnant woman by vehicle (§66-8-101.1) to the list of serious violent offenses;
- 6) Specifies that only child abuse that does not result in great bodily harm or death is an optional serious violent offense.

**FISCAL IMPLICATIONS**

Where the above offenders are imprisoned, this bill would increase length-of stay-for resulting in a corresponding increase in costs borne by the New Mexico Corrections Department.

**SIGNIFICANT ISSUES**

Currently, offenders convicted of first-degree child abuse resulting in death earn a thirty (30) day meritorious deduction for every thirty (30) days of incarceration absent a court finding that the crime was a serious violent offense. Under HB 305-Substitute, offenders who abuse a child to death will no longer be eligible for meritorious deductions.

Additionally, Section 33-2-34(G) currently precludes those sentenced to life imprisonment, including serious youthful offenders convicted of first-degree murder, from earning meritorious deductions. HB 305-Substitute may be read to allow serious youthful offenders convicted of first degree murder, even where that offender has been sentenced to life in prison, to earn a four (4) day meritorious deduction for every thirty (30) days incarcerated. On the other hand, while a court must sentence a serious youthful offender convicted of first degree murder to an adult sentence, §31-18-15.3(D) allows a court to impose a less-than-life sentence. According to the New Mexico Supreme Court, §31-18-15.3(D) therefore affords courts discretion in determining the meritorious deductions allowed to serious youthful offenders receiving less-than-life sentences. *State v. Tafoya*, 2010-NMSC-019, ¶¶ 14 – 15. Thus, it appears a court could also allow a serious youthful offender receiving a less-than-life sentence to earn a thirty (30) day meritorious deduction for every thirty (30) days of incarceration. HB 305-Substitute would prevent this outcome.

Currently, offenders convicted of child abuse resulting in great bodily harm earn a thirty (30) day meritorious deduction for every thirty (30) days of incarceration absent a court finding that the crime was a serious violent offense. Under HB 305-Substitute, offenders who abuse a child to the point that the child has great bodily harm will earn a four (4) day meritorious deduction for every thirty (30) days incarcerated.

Pursuant to HB 305-Substitute, offenders convicted of either homicide by vehicle or great bodily harm by vehicle while under the influence of intoxicating liquor or drugs will earn a four (4) day meritorious deduction for every thirty (30) days incarcerated. Currently, these offenders earn a thirty (30) day meritorious deduction for every thirty (30) days of incarceration absent a court finding that the crime was a serious violent offense.

Finally, under the current statute, offenders convicted of injury to a pregnant woman by vehicle earn a thirty (30) day meritorious deduction for every thirty (30) days of incarceration. Under HB 305-Substitute, these offenders will earn a four (4) day meritorious deduction for every thirty (30) days incarcerated.

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

This bill substitutes HB 305.

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

## **AMENDMENTS**